IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.7745 OF 2004

The Principal
Jawahar Navodaya Vidyalaya ..Petitioner

Vs.

Gautam s/o Bodal Gaikwad
and Anr. ..Respondents

....

Ms.S.A.Lobo for V.S.Masurkar for Petitioner
Mr.S.S.Kulkarni for Respondent No.1

....

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 7,2005

P.C.:

1. Heard Ms.Lobo, the learned counsel for the Petitioner-Vidyalaya and Mr.Kulkarni, the learned counsel for the Respondent No.1.

2. Rule.

3. The Respondent no.1 had filed Complaint (ULP) No. 409 of 1993 before the Labour Court at Solapur and challenged the termination of his services on or from 10.11.1993 by an oral order. The complaint came to be allowed as per the judgment and order dated 19.8.2003 and the said order has been challenged in this petition filed under Article 227 of the Constitution of India. In normal course, this

petition would not be entertained in view of alternative efficacious remedy being available under Section 44 of the M.R.T.U. and P.U.L.P. Act 1971 by way of filing Revision Application before the Industrial Court. However, the rule of exclusion of alternative remedy would operate in favour of the Petitioner as per the law laid down in the case of *Harbanslal Sahaniya and another Vs. Indian Oil Corporation Ltd. and Ors. [2003 (2) SCC 107],* for the following reasons:

. The Petitioner Vidyalaya is run by Navodaya Vidyalaya Samiti registered under the Societies Registration Act 1860. By Notification dated 17.12.1998 issued by the Govt. of India under Section 14(2) of the Administrative Tribunals Act, 1985, 1st January, 1999 is the specified date on or from which the provisions of Section 14(3) of the said Act, shall apply to the Navodaya Vidyalaya Samiti as the Society being a statutory organisation owned or controlled by the Govt. of India. If that be so, the Vidyalaya is not covered by the provisions of the M.R.T.U. and P.U.L.P.Act, 1971 in view of Section 2(3) of the said Act which reads as under:

. "Except as otherwise hereinabove provided, this Act shall apply to the industries to which the Bombay Industrial Relations Act, 1946 for

> the time being, applies and also to any industry as defined in clause (j) of Section 2 of the Industrial Disputes Act, 1947 and the State Govt. in relation to any industrial dispute concerning such industry is an appropriate Govt. under the Act".

4. In view of the Notification issued by the Govt. of India on 17.12.1992 under Section 14(2) of the Administrative Tribunals Act, 1985, the State Govt. is not an "appropriate Government" for the Petitioner-Vidyalaya as defined under Section 2(a) of the Industrial Disputes Act, 1947.

5. It is thus clear that the complaint filed by the Respondent-employee before the Labour Court challenging the purported oral termination was not maintainable as the M.R.T.U. and P.U.L.P.Act, 1971 is not applicable to the Petitioner Vidayalaya where the Respondent was working as one of the kitchen staff. The Labour Court passed the impugned order without jurisdiction and therefore, it is unsustainable.

6. Hence, this petition succeeds on this preliminary point and the same is hereby allowed. The impugned order passed by the Labour Court is quashed and set aside.

7. However, this order will not come in the way of

the Respondent-employee in approaching the Central Administrative Tribunal or any other competent forum if so desired and in case he files appropriate proceedings before such forum within a period of eight weeks from today, needless to mention, on the issue of delay, the pendency of the complaint in the Labour Court as well as the petition before this Court, may be taken into consideration.

8. Rule made absolute with no order as to costs.

[B.H.MARLAPALLE,J.]